

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 696 of 1997

in

SPECIAL CIVIL APPLICATION NO 3770 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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STATE OF GUJARAT

Versus

DEVJIBHAI DAMANIYABHAI VASAVA

Appearance:

GOVERNMENT PLEADER for Petitioners
MR MM JADEJA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 26/08/97

ORAL JUDGEMENT (per C.K.Thakker J.)

Admitted. Mr.M.M.Jadeja appears and waives

service of admission. In the facts and circumstances of the case the matter is finally heard to day.

This appeal is filed against the order passed by the learned Single Judge summarily disposing of Special Civil Application No. 3770 of 1997 on May 9, 1997.

The appellants are original respondents and the respondents are original petitioners.

The petitioners filed the above petition for an appropriate writ, direction or order directing the respondent authorities to regularise unauthorised cultivation of the forest land in village Jumawadi, Taluka Mangrol, District Surat. The contention of the petitioner was that they were in unauthorised possession since they have encroached over the forest land and that as per the resolution passed by the Government on October 6, 1992, the encroachment was required to be regularised. It appears that no notice was issued at the time when the petition came up for hearing before the learned Single Judge. The learned Single Judge was of the view that if the petitioners were in unauthorised occupation of the forest land and that if in similar cases, relying upon the resolution dt. October 6, 1992, encroachment was regularised, the only order which can be passed would be to permit the appellant to approach the Collector and to direct the Collector to decide the same in accordance with law. The learned Single Judge also observed that "till such decision is taken, the respondents shall not disturb the petitioners' possession and status quo shall be maintained qua the land in question." The learned Single Judge further observed that if the order will be against the petitioners, they have right to approach this court afresh.

Mr. Sompura, learned Assistant Government Pleader contended that firstly the petitioners are not entitled to invoke the relevant clauses of the resolution of October 6, 1992. We are not expressing any opinion on that aspect. In fact, the learned Single Judge has not stated anything. The learned Single Judge has only directed the Collector to decide the same. If the provisions cannot be invoked, obviously the Collector will pass appropriate order.

It was further submitted by Mr. Sompura that the order was passed by the learned Single Judge without issuing notice wherein it was mentioned that till the decision will be taken by the Collector, the respondent shall not disturb the petitioners' possession. Mr.

Sompura stated that the petitioners were not in possession and are in possession as on to day. It is clarified that till the Collector decides the matter, status quo as on to day will be maintained by all the parties.

Finally, we make it clear that the learned Single Judge has observed in the last para of the order that if the order will be passed against the petitioners, it will be open to them to again approach this court. So far that part is concerned, we do not see any reason to interfere with the same.

For the foregoing reasons, thee appeal deserves to be partly allowed and is accordingly allowed. In the facts and circumstances of the case, no order as to costs.

Dt.26.8.1997. (C.K.THAKKER J)

(S.D.PANDIT J.)